

Krishan Chander Vs. Chhail Sehan

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Court : Delhi

Decided On : Jan-30-1973

Reported in : 1973RLR271

Judge : P.N. Khanna, J.

Acts : Delhi Rent Control Act - Sections 12

Appeal No. : Second Appeal No. 301 of 1968

Appellant : Krishan Chander

Respondent : Chhail Sehan

Advocate for Pet/Ap. : M.L. Lonial, Adv

Judgement :

P.N. Khanna, J.

(1) The only point involved in this appeal is whether the appellant-tenant's application for fixation of standard rent is within time. In May, 1941, the premises consisting of four rooms, verandah and a garage, were let out by the respondent landlord to the appellant of Rs. 536 per month. The landlord filed a suit for eviction, which was decreed on February 7, 1957. Subsequently, the tenant surrendered two rooms and the garage to the landlord. On March, 31, 1962, the respondent landlord gave back to the appellant one room and a new tenancy in respect of

three rooms commenced with effect from 1st April, 1962, at Rs. 70 per month as rent. On April 23, 1962, the landlord filed an application for execution of this eviction decree, dated February 7, 1957, which was dismissed, the court holding that a fresh tenancy had been created after the eviction decree. On July 27, 1965, the landlord's appeal against the said order was also dismissed.

(2) The appellant-tenant then filed an application on June 10, 1966, for fixation of standard rent under sections 6 and 9 of the Delhi Rent Control Act, 1958. Under section 12 of the said Act, such an application should have been filed within two years from the commencement of the tenancy, which had commenced in this case on April 1, 1962. The application, therefore, could be filed up to March 31, 1964. The application dated June 10, 1966, was obviously barred by time. The contention of the learned counsel for the appellant is that the respondent-landlord having created disputes and doubts about the creation of the new tenancy, the appellant could not apply for fixation of standard rent before the dismissal of the landlord's appeal on July 27, 1965. It is contended that his status as a tenant remained in doubt before that date.

(3) According to the allegations of the appellant himself, the doubts, if any, about the appellant's status under the fresh tenancy were created for the first time on April 23, 1962. Doubts are not alleged to have been created from the very beginning. The fresh tenancy had started from April 1, 1962, and the right to file application for fixation of standard rent under section 9 also accrued on that very date. The period of limitation for filing the application started running. The creation of doubts, if any, at a subsequent stage, are of no relevancy. There is no provision in the Act under which the starting point of limitation can be postponed or the running of limitation can be suspended.

(4) The learned counsel submits that the tenant should be given the benefit of proviso to section 12 of the Act, according to which the Controller can entertain the application after the expiry of two years, if he is satisfied that the applicant was prevented by sufficient cause from filing the application in time.

(5) The tenant, in this case, did not make an application or a prayer in his standard rent application for entertaining the same after the expiry of the period of limitation,

nor did he allege that he was prevented by sufficient cause from filing the application in time. It is only the appellant's learned counsel, who urged this plea for the first time before the Controller. The Tribunal has negatived this plea ; and it appears to me, correctly. The appellant does not appear to be entitled to any benefit of the proviso to section 12. The question of the appellant having been prevented by sufficient cause is a question of fact and it should have been pleaded, to enable the parties to meet that aspect of the case. The appellant's learned counsel points out that copies of the judgments of the trial court and of the appellate court were filed by the appellant to show that litigation had been going on all along between the parties in respect of the creation of the fresh tenancy. But whether this created a sufficient doubt in the mind of the tenant also and whether this actually prevented him from applying earlier, are questions, which could be decided only after proper pleas had been raised in the pleadings and agitated between the parties (see *Anand Kumar v. Shama Magazine* 1971 Rcr 788).

(6) Apart from the above, the appellant has totally failed to explain what prevented him from making his application, immediately after July 27, 1965, when the landlord's appeal had been dismissed as noticed earlier. He rather slept over the matter for almost one year and on June 10, 1966, filed his applications. As was held in *Anand Kumar's* case (Supra), each day's delay in making the application after the expiry of the period of limitation has to be explained, which in the present case the appellant has failed to do. In fact, he has no explanation to offer. The application, thus, was rightly rejected by the Rent Control Tribunal, as barred by time. Appeal Dismissed. [Mr. S. P. Chugh, Adv.]